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LAW DEPARTMENT

NOTIFICATION

The 24th March 2009

No. 4127—I-Legis.-10/2009-L.—The following Acts of Parliament which are assented to by the President on the 31st December 2008 and published by the Government of India, Ministry of Law and Justice (Legislative Department) in the *Gazette of India*, Extraordinary, Part-II, Section-I, dated the 31st December 2008 are hereby republished for general information.

By order of the Governor

B. K. NAYAK

Principal Secretary to Government

THE NATIONAL INVESTIGATION AGENCY ACT, 2008

(Act No. 34 of 2008)

An Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
application.

2008.

1. (1) This Act may be called the National Investigation Agency Act,
- (2) It extends to the whole of India and it applies also—
 - (a) to citizens of India outside India;
 - (b) to persons in the service of the Government wherever they may be; and
 - (c) to persons on ships and aircrafts registered in India wherever they may be.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Agency” means the National Investigation Agency constituted under Section 3;

(b) “Code” means the Code of Criminal Procedure, 1973; 2 of 1974.

(c) “High Court” means the High Court within whose jurisdiction the Special Court is situated;

(d) “prescribed” means prescribed by rules;

(e) “Public Prosecutor” means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under Section 15;

(f) “Schedule” means the Schedule to this Act;

(g) “Scheduled Offence” means an offence specified in the Schedule;

(h) “Special Court” means a Special Court constituted under Section 11 or, as the case may be, under Section 22;

(i) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

NATIONAL INVESTIGATION AGENCY

Constitution
of National
Investigation
Agency.

3. (1) Notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the Acts specified in the Schedule. 5 of 1861.

(2) Subject to any orders which the Central Government may make in this behalf, officers of the Agency shall have throughout India in relation to the investigation of Scheduled Offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein.

(3) Any officer of the Agency of, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

Superintendence
of National
Investigation
Agency.

4. (1) The superintendence of the Agency shall vest in the Central Government.

(2) The administration of the Agency shall vest in an officer designated as the Director-General appointed in this behalf by the Central Government who shall exercise in respect of the Agency such of the powers exercisable by a Director-General of Police in respect of the police force in a State, as the Central Government may specify in this behalf.

Manner of
constitution
of Agency
and
conditions
of service
of
members.

5. Subject to the provisions of this Act, the Agency shall be constituted in such manner as may be prescribed and the conditions of service of persons employed in the Agency shall be such as may be prescribed.

CHAPTER III

INVESTIGATION BY THE NATIONAL INVESTIGATION AGENCY

Investigation
of
Scheduled
Offences.

6. (1) On receipt of information and recording thereof under Section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, *suo motu*, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

Power to transfer investigation to State Government.

7. While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—

(a) if it is expedient to do so, request the State Government to associate itself with the investigation; or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

Power to investigate connected offences.

8. While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence.

State Government to extend assistance to National Investigation Agency.

9. The State Government shall extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences.

Power of State Government to investigate Scheduled Offences.

10. Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force.

CHAPTER IV

SPECIAL COURTS

Power of Central Government to constitute Special Courts.

11. (1) The Central Government shall, by notification in the Official Gazette, for the trial of Scheduled Offences, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the Central Government on the recommendation of the Chief Justice of the High Court.

(4) The Agency may make an application to the Chief Justice of the High Court for appointment of a judge to preside over the Special Court .

(5) On receipt of an application under sub-section (4), the Chief Justice shall, as soon as possible and not later than seven days, recommend the name of a judge for being appointed to preside over the Special Court.

(6) The Central Government may, if required, appoint an additional judge or additional judges to the Special Court, on the recommendation of the Chief Justice of the High Court.

(7) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

(8) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs shall not affect his continuance as such judge or additional judge and the Central Government may by order direct that he shall continue as judge until a specified date or until completion of the trial of the case or cases before him as may be specified in that order.

(9) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Place of sitting.

12. A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting.

Jurisdiction of Special Courts.

13. (1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) If, having regard to the exigencies of the situation prevailing in a State if,—

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation.

Powers of Special Courts with respect to other offences.

14. (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law.

Public
Prosecutors.

15. (1) The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure
and
powers of
Special
Courts.

16. (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is not desirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to, and in relation to, a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to five lakh rupees.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under sub-section (2) of Section 13 shall be dealt with as if such case had been transferred under Section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of Section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

Protection
of
witnesses.

17. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires.

(2) On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees.

Sanction
for
prosecution.

18. No prosecution, suit or other legal proceedings shall be instituted in any court of law, except with the previous sanction of the Central Government, against any member of the Agency or any person acting on his behalf in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Trial by
Special
Court to
have
precedence.

19. The trial under this Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance.

Power to
transfer
cases to
regular
courts.

20. Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeals.

21. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from :

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.

Power of
State
Government
to
constitute
Special
Courts.

22. (1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—

(i) references to “Central Government” in Sections 11 and 15 shall be construed as references to State Government;

(ii) reference to “Agency” in sub-section (1) of Section 13 shall be construed as a reference to the “investigation agency of the State Government”;

(iii) reference to “Attorney-General for India” in sub-section (3) of Section 13 shall be construed as reference to “Advocate-General of the State”.

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

CHAPTER V

MISCELLANEOUS

Power of
High Courts
to make
rules.

23. The High Court may, by notification in the Official Gazette, make such rules, as it may deem necessary for carrying out the provisions of this Act relating to Special Courts within its territory.

Power to
remove
difficulties.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made, under this section after the expiration of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power to
make rules.

25. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality to the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of constitution of the Agency and the conditions of service of persons employed in the Agency Under Section 5;

(b) any other matter which is required to be, or may be, prescribed.

Laying of
rules.

26. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agrees in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See Section 2(1)(f)]

1. The Atomic Energy Act, 1962 (33 of 1962);
2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
3. The Anti-Hijacking Act, 1982 (65 of 1982);
4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);
5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
6. The Suppression of Unlawful Acts against safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
8. Offences under—
 - (a) Chapter VI of the Indian Penal Code (45 of 1860) [Sections 121 to 130 (both inclusive)];
 - (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860).

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2008
(ACT NO. 35 OF 2008)

An Act further to amend the Unlawful Activities (Prevention) Act, 1967.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Unlawful Activities (Prevention) Amendment Act, 2008.

Insertion of Preamble. 2. In the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the Principal Act), after long title and before the enacting formula, the following preamble shall be inserted, namely:— 37 of 1967.

“WHEREAS the Security Council of the United Nations in its 4385th meeting adopted Resolution 1373 (2001) on 28th September, 2001 under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism;

AND WHEREAS Resolutions 1267(1999), 1333 (2000), 1363 (2001), 1390(2002), 1455 (2003), 1526(2004), 1566(2004), 1617(2005), 1735(2006) and 1822 (2008) of the Security Council of the United Nations require the States to take action against certain terrorists and terrorist organisations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;

AND WHEREAS the Central Government, in exercise of the powers conferred by Section 2 of the United Nations (Security Council) Act, 1947 has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007; 43 of 1947.

AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.”.

Amendment
of
Section 2.

3. In Section 2 of the principal Act,—

(i) in clause (d), the words “and includes a Special Court constituted under Section 11 or under Section 21 of the National Investigation Agency Act, 2008;” shall be inserted at the end;

(ii) after clause (e), the following clause shall be inserted, namely:—

‘(ea) “Order” means the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007 as may be amended from time to time;’;

(iii) in clause (g), after the words “for the purpose of a terrorist organisation”, the words “or terrorist gang” shall be inserted at the end;

(iv) for clause (h), the following clauses shall be substituted, namely:—

‘(h) “Property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents, deeds and instruments in any form including electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired;

(ha) “Schedule” means the Schedule to this Act;’.

Substitution
of new
section for
Section 15.
Terrorist
Act.

4. For Section 15 of the principal Act, the following section shall be substituted, namely:—

“15. Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

Explanation.—For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary.”.

Insertion of
new
Section
16A.

Punishment
for making
demands of
radioactive
substances,
nuclear
devices,
etc.

5. After Section 16 of the principal Act, the following section shall be inserted, namely :—

“16A Whoever intentionally, by use of force or threat of use of force or by any other means, demands any bomb, dynamite or other explosive substance or inflammable substances or fire arms or other lethal weapons or poisonous or noxious or other chemicals or any biological, radiological, nuclear material or device, with the intention of aiding, abetting or committing a terrorist act, shall be punishable with imprisonment for a term which may extend to ten years and shall also be liable to fine.”.

Substitution
of new
Section for
Section 17.

6. For Section 17 of the principal Act, the following section shall be substituted, namely:—

Punishment
for raising
funds for
terrorist
act.

“17. Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”.

Amendment
of
Section 18.

7. In Section 18 of the principal Act, for the words “incites or knowingly facilitates”, the words “incites, directs or knowingly facilitates” shall be substituted.

Insertion of
new
Sections
18A and
18B.
Punishment
for
organising
of terrorist
camps.

8. After Section 18 of the principal Act, the following sections shall be inserted, namely:—

“18A. Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Punishment
for
recruiting of
any person
or persons
for terrorist
act.

18B. Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.”.

Amendment
of Section
23.

9. In Section 23 of the principal Act, —

(a) in sub-section (1), for the words “If any person with intent to aid any terrorist contravenes”, the words “If any person with intent to aid any terrorist or a terrorist organisation or a terrorist gang contravenes” shall be substituted.

(b) in sub-section (2), for the words “Any person who, with the intent to aid any terrorist”, the words “Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang” shall be substituted.

Amendment
of Section
24.

10. In Section 24 of the principal Act, in sub-section (2), after the words “proceeds of terrorism whether held by a terrorist or”, the words “terrorist organisation or terrorist gang or” shall be inserted.

Amendment
of Section
25.

11. In Section 25 of the principal Act, in sub-section (5), in the Explanation, after clause (c), the following clause shall be inserted, namely:—

“(ca) credit or debit cards or cards that serve a similar purpose;”;

Insertion of
new
Sections
43A to 43F.
Power to
arrest,
search etc.

12. After Section 43 of the principal Act, the following sections shall be inserted, namely:—

‘43A. Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

Procedure
of arrest,
seizure,
etc.

43B. (1) Any officer arresting a person under Section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under Section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

Application
of
provisions
of Code.

43C. The provisions of the Code shall apply, in so far as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.

Modified
application
of certain
provisions
of the
Code.

43D. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to “the State Government” shall be construed as a reference to “the Central Government or the State Government”;

(ii) to “order of the State Government” shall be construed as a reference to “order of the Central Government or the State Government, as the case may be”; and

(b) the reference in sub-section (2) thereof, to “the State Government” shall be construed as a reference to “the Central Government or the State Government, as the case may be”.

(4) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond, if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

Presumption
as to
offence
under
Section 15.

43E. In a prosecution for an offence under Section 15, if it is proved —

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

(b) that by the evidence of the expert, the finger prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

Obligation
to furnish
information.

43 F. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with the prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in his or its possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(2) The failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, an offence under sub-section (2) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of Section 262] shall be applicable thereto.’.

Amendment
of Section
45.

13. Section 45 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within

such time as may be prescribed, to the Central Government or, as the case may be, the State Government.”.

Insertion of
new
Section
51A.
Certain
powers of
the Central
Government.

14. After Section 51 of the principal Act, the following section shall be inserted, namely:—

“51A. For the prevention of, and for coping with terrorist activities, the Central Government shall have power to—

(a) freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism;

(b) prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism;

(c) prevent the entry into or the transit through India of individuals listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism.”.

Amendment
of Section
52.

15. In Section 52 of the principal Act, in sub-section (2), after clause (e), the following clause shall be inserted, namely:—

“(ee) the time within which sanction for prosecution and recommendation to the Central Government shall be given under sub-section (2) of Section 45, and”.

Amendment
of Section
53.

16. Section 53 of the principal Act, shall be renumbered as sub-section (1) thereof and after sub-section as so renumbered, the following sub-section shall be inserted, namely:—

“(2) The Order referred to in entry 33 of the Schedule and every amendment made to that Order shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions.”.

Amendment
of
Schedule.

17. In the Schedule to the principal Act after entry 32, the following entry shall be inserted, namely:—

“33. Organisations listed in the Schedule to the U.N. Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007 made under Section 2 of the United Nations (Security Council) Act, 1947 and amended from time to time.”.

43 of 1947.

THE NATIONAL INVESTIGATION AGENCY ACT, 2008

(ACT No. 34 OF 2008)

ARRANGEMENT OF SECTION

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